

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Complaint of Fiber Technologies)	D.T.E. 01-70
Networks, L.L.C.)	
_____)	

MOTION FOR EXTENSION OF TIME TO FILE COMMENTS

Pursuant to 220 C.M.R. 1.02(5), Shrewsbury’s Electric Light Plant (“SELP”) hereby requests an extension of time in which to file comments as requested by the Department of Telecommunications and Energy (“DTE”) on December 15, 2003. In support of its request, SELP states that the current due date for such comments presents a conflict with SELP’s counsel’s schedule in a number of ongoing, active superior court cases, in which briefs, motions and discovery are due, as well as vacation plans over the next two weeks (in which two intervening legal holidays - - Christmas and New Year’s - - will occur.) Adding to SELP’s concern is the fact that it is unclear why the DTE is requesting the comments in the first instance, and the manner in which the comments are to be filed.

Even without the scheduling conflicts, SELP would require additional time in which to respond because of the highly unusual nature of the Department’s request for comments, and through this motion, objects to the procedure utilized by the Department in the request. On the one hand, the Department stated in its December 15, 2003 Procedural Memorandum that Fibertech’s wholesale tariffs, filed in November of 2003, “may affect questions of law or fact material to the Department’s review of Fibertech’s motion for reconsideration and clarification.....” The tariff was not appended to the request, and SELP has no information as to what triggered the Department’s request at this point in the proceedings.

The Department also directs the parties, in its Procedural Memorandum, to address the core issues in this case, i.e., whether the tariffs impact whether Fibertech is a “licensee” and whether Fibertech is “incorporated for the transmission of intelligence”—as if there has never been a ruling on the very issue of the impacts of tariffs previously in this case. The law of the case as expressed in the Department’s December 24, 2002 Interlocutory Order in this matter makes clear that the mere filing of a tariff “does not constitute a finding that the company engages in common carriage by providing the tariffed services.” *Interlocutory Order, Fiber Technologies Networks, LLC*, D.T.E. 01-70, at 19 (December 24, 2002). Filing a “wholesale” as opposed to a “retail” tariff changes nothing in this regard.

The Department also ordered on December 24, 2002 that Fibertech must produce discovery that would go to the determination of whether Fibertech is a “in the business of transmission of intelligence.” *Id.* at 42-43. This is also the law of this case. Fibertech has not yet forwarded such documents. SELP does not understand what has changed in this case by the mere filing of a “wholesale” versus a “retail” tariff. The Department ordered that certain documents were necessary to determine whether Fibertech is a licensee. This is still the case.

It is difficult for SELP to understand, therefore, why the Department is seeking comments on this issue and through this unusual procedure. It is SELP’s position that if the Fibertech believes that the filing of its wholesale tariff has now magically transformed it into a “licensee” that is “engaged in the transmission of intelligence,” when previously the mere filing of its retail tariff was unable to accomplish such an end, then as the party with the burden of proof (and, consistent with the DTE’s own procedural rules on order of presentation at 220 C.M.R. 1.06(f)), Fibertech should be required to first file a pleading describing why and how this transformation has occurred. Only after Fibertech has filed its pleading should SELP have to respond.

Otherwise, SELP will just be “shooting in the dark.” SELP has no information as to why it is being requested to comment on the matter of Fibertech’s wholesale tariff filing at this point in the proceedings, after such a length of time has elapsed from Fibertech’s motion for clarification and reconsideration, and in light of the law of the case. Drafting comments in such a context makes the task all the more challenging.

No action has been taken in this case since the DTE issued its Interlocutory Order nearly one year ago, and after the complainant, Fibertech requested reconsideration and clarification of that order in January of 2003. Given the length of time that has elapsed with no action taken on this matter, no party will be prejudiced by a delay posed by this request for an extension. . Accordingly, SELP requests that the due date for comments as requested by the Department on December 15, 2003 be extended by two weeks until the close of business on January 20, 2004.

Respectfully submitted,

SHREWSBURY’S ELECTRIC LIGHT
PLANT

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